Supreme Court, U. S.
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NO. 79-2040

UNITED STATES SURPEME COURT

OCTOBER TERM 1980

RICHARD F. PACILEO, SHERIFF,
Petitioner,

vs.

JAMES DEAN WALKER,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF
THE STATE OF CALIFORNIA

SUPPLEMENTAL POINTS AND AUTHORITIES IN RESPONSE TO PETITION OF WRIT OF CERTIORARI

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ARGUMENT

Respondent respectfully submits that following its own guidlines estab-lised in the case of Resque Army vs Municipal Court (1947) 331 U.S. 549, 67 Sup. Ct. 1409, this Honorable Court should decline to exercise jurisdiction in this case.

In the above cited case, a Writ of Prohibition was sought to prohibit pending prosecution for violation of municipal or-dinances governing the solicitation of con-tributions for charity. The Supreme Court of California denied the Petition for Writ of Prohibition and that denial was appealed to the U.S. Supreme Court. The Court de-cided ".....this Court has followed a policy of strict necessity in disposing of con-stitutional issues." At page 568. This Court further delineated its position by adding that the Court has developed for its own governance in the cases expressly within its jurisdiction, a series of rules under which it has avoided passing upon a

large part of all the constitutional questions pressed upon it for decision. Thus, as those rules were listed in support of the statement quoted, constitutional issues affecting legislation will not be determined in friendly, non-adversary proceedings: in advance of the necessity of deciding them; in broader terms than are required by the precise facts to which the ruling is to be applied; if the record presents some other ground upon which the case may be disposed of; at the instance of one that fails to shown that he is injured by the statutes of operation, or who has availed himself of its benefits; or if a construction statue is fairly possible by which the question may be avoided. At page 568-569.

The court continued by saying that the relief is neither sought nor needed beyond adjudication of the jurisdictional issue. The suit seeks only in substance, a traditional declaration that jurisdiction does not exist in the municipal court. But,

for a variety of reasons, the shape in which the underlying constitutional issues have reached this court presents, we think, insuperable obstacles to any exercise of jurisdiction to determine them. Those reasons comprise obstacles of prematurity, and comparative abstractness arising from the nature of the proceeding in prohibition and the manner in which the parties have utilized it for presenting the constitutional questions. At pages 574-575.

"In the first place, the constitutional issues come to us in highly abstract form, the ....record presents only bare allegations that he was charged criminally...., and that those sections are unconstitutional, on various assignments, as applied to his alleged solitictations. We are therefore without benefit of the precision which would be afforded by proof of conduct made upon trial." At page 575.

The Court concluded that the defendant's rights could be assured of pro-

tection, even though, at the trouble and expense of undergoing another trial. Those inconveniences, conceedlingly substantial, do not outweigh the strong considerations relative to the court's function dictating that it should undertake a task at once so speculative and so foreign to them. At page 579.

In the case at bar, this Court is presented with the same problems of prematurity and abstractness dealt with in the case of Resque Army. There has been no factual determination as to the constitutionality of the Arkansas prison system, nor the type, manner, source or severity of alleged threats to Respondent's life.

For these reasons, the Respondent believes that this Court should decline to exercise jurisdiction in this case.

Respectfully submitted,

R.W. Geandrot

ROBERT W. GEANDROT,